



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

August 1, 2011

Clint Stanovsky  
Town of Skykomish  
119 4<sup>th</sup> Street N.  
Skykomish, WA 98288

RE: Water Quality Certification Order #8602 for U.S. Army Corps of Engineers Public Notice #NWS-2011-48, Maloney Creek Restoration Project, in Skykomish, King County, Washington

Dear Mr. Stanovsky:

On May 4, 2011, Town of Skykomish submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Maloney Creek Restoration project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Unit Supervisor  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

**By certified mail: 7011 0470 0003 3720 8902**

cc: Kris Dillon, U.S. Army Corps of Engineers  
Jamie Bails, Washington Department of Fish and Wildlife  
Cleve Steward, AMEC Earth & Environmental, Inc.  
Mayor Fred Black, Town of Skykomish



e-cc: Patricia Lambert – NWRO  
Brian Sato – NWRO  
David Radabaugh – NWRO  
Loree' Randall – HQ  
Raman Iyer – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)  
Jason Luker [jason.luker@hotmail.com](mailto:jason.luker@hotmail.com)

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER #8602</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference #NWS-2011-48</b>
<b>CERTIFICATION TO</b>	)	Maloney Creek Restoration Project; Skykomish,
<b>TOWN OF SKYKOMISH</b>	)	King County, Washington.
in accordance with 33 U.S.C. 1341	)	
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

TO: Clint Stanovsky  
Town of Skykomish  
119 4<sup>th</sup> Street N.  
PO Box 308  
Skykomish, WA 98288

On May 4, 2011, Town of Skykomish submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 17, 2011.

The proposal is to excavate and lower the elevation of Maloney Creek, create riffle pool habitat within the creek, create a braided network of overflow channels and sediment deposition areas, and modify an existing rock berm between the Town of Skykomish and Maloney Creek. Work would include the following:

- Excavate 2,550 linear feet of Maloney Creek by removing 12,000 cubic yards of material within the active channel. Fill portions of the main channel to create riffle pools within the channel. Realign and shorten the existing main channel by moving it closer to the base of the adjoining, north-facing hill slope.
- Install up to 28 large wood and five rock structures consisting of individual or multiple large-diameter boulders and logs keyed into the stream bank.
- Lower the streambed elevation of Maloney Creek by 1.5 to 4 feet, realigning the main channel so that it is closer to the base of the adjoining hill. Reposition existing large bed elements to create a series of step pools and chutes to ensure hydraulic conditions.
- Modify approximately 350 feet of the existing rock berm between the Town and Maloney Creek by placing materials excavated from Maloney Creek on top of the berm, raising the berm to a uniform 3-foot height. Install riparian plantings in the areas between the constructed berm and the low-flow channel of Maloney Creek.

The project is located in Skykomish, King County, Washington, Maloney Creek, Sections 35 and 26, T. 26 N., R. 11E., WRIA 7.

## **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

## **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

### **A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean Town of Skykomish and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #8602 and Corps Reference #NWS-2011-48.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 4, 2011. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Riparian Planting Conditions:**

- B1. Riparian planting shall be implemented according to Sheet 20 of 21 Planting Plan and Sheet 21 of 21 Plant List and Details, Maloney Creek Restoration, dated April 2011, or as modified by this Order or revised and approved by Ecology.
- B2. Riparian planting shall be monitored per the *Vegetation Monitoring Plan, Lower Maloney Creek Habitat Restoration Project, Skykomish, Washington*, prepared by AMEC Earth & Environmental, Inc., dated July 14, 2011, or as modified by this Order or revised and approved by Ecology.
- B3. A copy of the as-built report shall be sent to Ecology's Northwest Regional Office, per Condition A2, within 60 days of completing installation of the mitigation measures.
- B4. Monitoring: The condition of riparian plantings shall be recorded in years 1, 3, and 5 after the Year 0 report. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. Copies of all monitoring reports shall be submitted to Ecology per Condition A2 above by December 31 of each year that they are due.

**C. Water Quality Conditions:**

- C1. Maloney Creek is classified as "Char Spawning and Rearing" and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
- C2. Water quality shall be sampled and monitored during "in-water construction" below the ordinary high water mark of Maloney Creek per the *Water Quality Protection and Monitoring Plan, Lower Maloney Creek Habitat Restoration Project, Skykomish, Washington*, prepared by AMEC Earth & Environmental, Inc., dated July 14, 2011, or as modified by this Order or revised and approved by Ecology.

**D. Conditions for Construction Activities:**

**General Conditions:**

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.

- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D6. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
- D7. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D8. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that has washed into freshwater areas shall be removed from the project area.

**E. Sediment Monitoring Conditions:**

- E1. Sediments in the creek shall be monitored per the *Coarse Sediment Monitoring and Maintenance Plan, Lower Maloney Creek Habitat Restoration Project, Skykomish, Washington*, prepared by AMEC Earth & Environmental, Inc., dated May 19, 2011, or as modified by this Order or revised and approved by Ecology.

**F. Emergency/Contingency Measures:**

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

- F2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- F3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- F4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
  - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**G. Timing Requirements**

- G1. This Order is valid until all compliance requirements in this document have been met.

**H. Reporting and Notification Requirement Conditions**



- H1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- H2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:
- At least three (3) days prior to the start of each construction season.
  - Within 14 days after completion of construction for each season at the project site.

Notification, referencing Corps Reference #NWS-2011-48, Order #8602 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

- H3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

#### **YOUR RIGHT TO APPEAL**

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

#### **ADDRESS AND LOCATION INFORMATION**

<b>Street Addresses</b>	<b>Mailing Addresses</b>
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

## CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
rpada461@ecy.wa.gov

## MORE INFORMATION

### Pollution Control Hearings Board Website

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

### Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

### Chapter 371-08 WAC – Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

### Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

### Chapter 173.204 WAC – Sediment Management Standards

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)


### Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

### Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

## SIGNATURE

  
Erik Stockdale, Unit Supervisor  
Wetlands/401 Unit  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

August 1, 2011

**ATTACHMENT A**

**TOWN OF SKYKOMISH  
MALONEY CREEK RESTORATION PROJECT  
Water Quality Certification Order #8602**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #8602 Section 401 Water Quality Certification for the Town of Skykomish Maloney Creek Restoration Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company